

REMARKS

Claims 1-3 and 5-18 remain in the application. In a telephone interview on 9 December 2004 the applicant's attorney asked the examiner to consider the possibility that he (the examiner) may have inadvertently examined the application in response to applicant's Request for Continued Examination without considering the applicant's most recent amendments and arguments, i.e., those filed in response to the previous Office Action. In support, the applicant noted that the present Office Action is almost a carbon-copy of the previous Office Action and repeatedly objects to and cites prior art against claim language that has been removed by amendment. After a lengthy discussion, the examiner insisted that the present Office Action was responsive to the application with applicant's most recent amendments entered. The applicant will attempt to proceed with this response on that basis, but asks that the examiner reconsider his determination that he has, indeed, provided the applicant with arguments to the claims and specification as most recently amended. Otherwise, the applicant will have been denied an opportunity to respond to such arguments.

The Office Action repeats the objection first raised in the previous Office Action to the amendment filed 6 October 2003 under 35 U.S.C. 132 for ostensibly adding new matter by amending the specification to disclose a control module that includes *only enough outputs* to connect respective cells of a portion of the array to the fluid supply system via the control module, etc. The Office Action repeats the argument that these changes are not supported in the original application and again states that the applicant is required to cancel the ostensible new matter (the *only enough outputs* language) in the reply to this Office Action.

Similarly, the action rejects claims 1-18 under 35 U.S.C. 112, first paragraph, repeating the reasoning first presented in the previous Office Action: that claims 2-18 depend from claim one, and claim one recites that the control module

includes ***only enough outputs*** to connect respective cells of a portion of the array to the fluid supply system via the control module (which allows the array to be conformed to any one of a plurality of different vehicle types by connecting to the limited number of outputs only those cells that are appropriate or intended for use in a given vehicle type). The action repeats the contention that the originally filed specification doesn't support this ostensible added subject matter (the ***only enough outputs*** language) and that this language must be canceled.

In response, the applicant cited the first two paragraphs of page 19 of the original specification in support the above amendments, but, nevertheless canceled the ***only enough outputs*** language from the specification and claims, amended the terminology of claim 1 and the corresponding portion of the invention summary to more closely correspond to that used in the first two paragraphs of page 19 of the original specification. This is the same ostensible added subject matter (the ***only enough outputs*** language) that the present Office Action now requires that the applicant cancel. Since the applicant has already canceled this subject matter, the applicant asks that the examiner clarify the intent of this further instruction to cancel the subject matter. In any event, as amended, the applicant maintains that claim 1 and the invention summary are in acceptable form.

The Office Action objects to the numbering of the claims for not being in accordance with 37 CFR 1.126. According to the action, misnumbered claims 1-3 and 5-18 have been renumbered claims 1-17. The applicant notes that the original claim numbering was restored in the amendment responding to the previous Office Action, asks that the examiner therefore explain his instructions that the claim numbering again be corrected, and asks that the examiner insure that the amendments filed in response to the previous office action have been entered.

The Office Action again rejects claims 1-15 (1-3 and 5-16?) under 35 U.S.C. § 102(e) as being anticipated by US 6203105 to Dick Rhodes (the Rhodes patent).

In response to these arguments by the applicant, the Action repeats the arguments made with regard to these claims in the previous Office Action:

- The Action lists the claim limitation “a plurality of air cells (1) with expandable chambers” as being disclosed in Rhodes Jr. This limitation appeared in claim 1 as originally filed, but doesn’t appear in the amended claim 1 as presented in response to the previous Office Action.

- The Action lists the claim limitation “fittings for cutting off one or more of the air cells” as being disclosed in Rhodes Jr. This limitation also appeared in claim 1 as originally filed, but doesn’t appears in the amended claim 1 as presented in response to the previous Office Action.

The only portion of the examiner’s argument that is not repeated from the previous Action, is the following note found at the end of the examiner’s argument: “The control module has **enough outputs to connect to a limited number of air cells** (see col. 6, line 2) although the cells may comprise a group of cells in a series. [emphasis in the original]. The applicant has two responses to this final portion of the argument:

- 1) The examiner refers to this limitation as being disclosed in Rhodes Jr. However, as amended by applicant’s response to the previous Office Action, claim 1 no longer uses these words to limit the control module. The 16 August 2004 response deletes the words “enough outputs to connect,” replacing them with the words “a limited number of outputs corresponding to the limited number of air cells.”

- 2) To say that Rhodes Jr. discloses a control module having **enough outputs to connect to a limited number of air cells** seems an obvious statement and it’s not clear to the applicant how this relates to the applicant’s arguments above or the corresponding claim amendments. A control module, unless it has an infinite number of outputs, will *always* have only enough outputs to connect to a limited number of air cells. But claim one, at least as amended in response to the last Office Action, is not so broad as to cover all control modules that have enough outputs to connect to a limited number of air cells. As the applicant argued in response to the previous Office Action, claim one includes the following

limitations that the Rhodes patent neither discloses nor suggests:

- a control module configured to connect to and operate only a limited number of air cells *selected from a plurality of air cells*;
- a control module that includes only a limited number of outputs *corresponding to the limited number of air cells* and *connecting respective ones of the limited number of air cells* to the fluid supply system via the control module; or
- a plurality of air cells that may be conformed to any one of a number of different vehicle types *by connecting to the limited number of outputs only those cells selected from the plurality of air cells as being appropriate or intended for use in a given vehicle type*.

For these reasons, the applicant once again maintains that the Rhodes patent anticipates neither claim 1 nor dependent claims 2, 3, or 5-16.

The Office Action again rejects claims 16 and 17 (17 and 18?) under 35 U.S.C. § 103(a) as being unpatentable over the Rhodes patent for the same identical reasons as set forth in the previous Office Action: because the method steps described in those claims “would inherently be incorporated within the use of the invention.” In response to that previous Office Action the applicant argued the following:

With this statement it appears that the Action is arguing that it’s inherent in the seating system design disclosed in the Rhodes patent that certain air cells (that are not to be used in a given application) be deactivated by disconnecting them. In response, the applicant maintains that inherency requires that the missing descriptive matter is *necessarily present* in the thing described in the reference, and that persons of ordinary skill would so recognize it. *Continental Can Co., U.S.A. v. Monsanto Co.*, 948 F.2d 1264, 1268-69 20 U.S.P.Q.2d 1746, 1749-50 (Fed.Cir.1991). Inherency may not be established by probabilities or possibilities. *Id.* The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient. *Id.* In other words, to be inherent, a claimed process or method step must have no alternative – the step must *necessarily* be followed when the invention is practiced. That is not the case here. There are any number of ways that individual cells could be deactivated, e.g., by closing valves, by puncturing the cells, or by fixing an exhaust valve permanently in an open position to prevent the accumulation of air. Also, as a preliminary matter, there’s

nothing in the Rhodes patent that either discloses or suggests that certain air cells might be deactivated, disconnected, or, in some fashion, cut-off to suit different applications. The Office Action has provided no evidence that the Rhodes system must (rather than might) include the steps of deactivating certain cells by either disconnecting the cells to be deactivated or connecting only the cells that are not to be deactivated as recited in claims 17 and 18. Instead, what the Rhodes patent actually discloses is temporary deactivation of cells by selectively operating valves. For these reasons the applicant maintains that claims 17 and 18 are patentable over the Rhodes patent.

The applicant is unable to locate in the present Office Action any response in the present Office Action to the applicant's arguments above despite the fact that, in Supplemental Remarks filed 19 October 2005 the applicant specifically asked that the examiner respond to these arguments. The applicant asks, once again, that the examiner respond to these arguments and provide the applicant an opportunity to respond, and again maintains that claims 17 and 18 are patentable over the Rhodes patent.

In the section of the present Office Action entitled "*Response to Arguments*," the Office Action first addresses applicant's argument that the specification suggests a control module with *only enough outputs* to connect respective cells of a plurality of cells. It's true that the applicant argued that the *only enough outputs* language was supported in the specification, but, as pointed out earlier in this response, the applicant then went on to point out that the applicant had, nonetheless, amended the claim to delete the *only enough outputs* language and provided arguments in support of the newly amended claim language. The present Office Action does not address the applicant's arguments with regard to that newly amended claim language. The applicant asks that the examiner respond to those arguments and provide the applicant an opportunity to respond.

Also in the "*Response to Arguments*" section of the present Office Action, the examiner addresses the applicant's argument that Rhodes Jr. "fails to teach a module with *only enough outputs* to connect to respective cells of a plurality of cells." However, the applicant doesn't make this argument in the response to the previous Office

Action. The applicant made this argument on page 13 of an earlier response (filed 2 September 2003) to the Office Action mailed 11 August 2003. The applicant didn't make this argument in response to the previous Office Action because the applicant amended the claims to omit the *only enough outputs* language and replace it with language more clearly supported in the specification. Again, the applicant asks that the examiner respond to applicant's most recent amendments and arguments.

Claims 1-3 and 5-18 recite patentable subject matter and are allowable. Therefore, the applicant respectfully submits that the application is now in condition for allowance and respectfully solicits such allowance. Please favorably reconsider the outstanding Office Action.

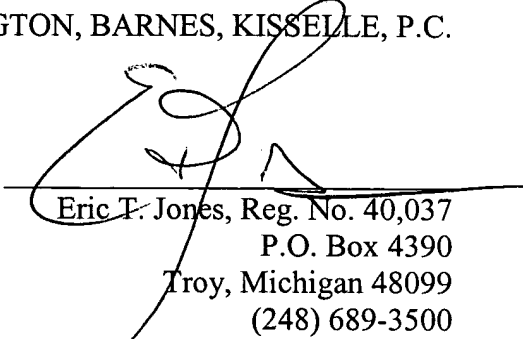
The applicant asks that the examiner ensure that the amendments filed in the previous Office Action under the provisions of 37 CFR §1.116 and submitted with the Request for Continued Examination, are entered. The applicant also requests an additional opportunity to respond since it is apparent that applicant's amendments and arguments made in response to the previous office action have not been considered.

March 3, 2005

I authorize the Assistant Commissioner to charge any deficiencies, or credit any overpayment associated with this communication to Deposit Account No. 50-0852. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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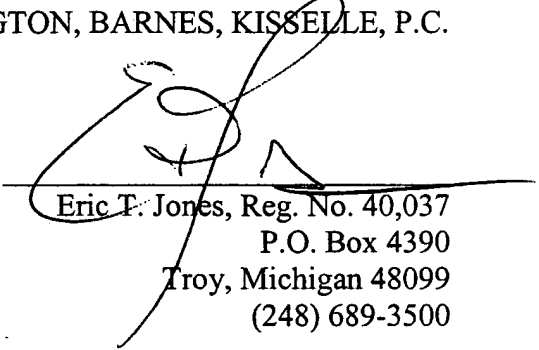
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